IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.421 OF 2007
IN
SUMMARY SUIT NO.708 OF 1995

Bank of Baroda ...Plaintiffs
vs.
M/s.Nirala Construction Co. & Ors. ...Defendants

Ms Parulekar for the Plaintiffs
Mr.Shane i/b Hariani & Co. for the Defendants

CORAM: A.S.OKA,J.
DATE : OCTOBER 8,2007

P.C.:

1. Heard learned counsel for the plaintiffs. The learned counsel for the defendants states that the fourth defendant has expired two years back. Statement is accepted. In view of this statement, the suit stands abated as against the fourth defendant. He states that the first defendant-partnership firm has been since dissolved.

2. In the Summary suit of the year 1995, summons for Judgment taken out earlier was disposed of by order dated 26th November 1996. In the said order, this court recorded a prayer was made by the counsel for the plaintiffs for withdrawal of the Summons for Judgment. Accordingly, the Summons for Judgment was allowed to be withdrawn with liberty to take out a fresh Summons for Judgment after carrying out necessary amendment to the plaint.

3. By order dated 29th August 2007, this court directed that the suit shall be set down for dismissal as no steps were taken by the plaintiffs.

4. On the basis of the liberty granted by the order dated 26th November 1996, the present Summons for Judgment has been taken out on 26th September 2007. Apart from the gross delay in taking out the Summons for Judgment, I find that under the order dated 26th November 1996, this court granted liberty to take out a fresh Summons for Judgment after carrying out necessary amendment to the plaint. Perusal of the plaint shows that no amendment has been carried out to the plaint after the order dated 26th November 1996 was passed. Apart from the fact that liberty granted by this court was not availed by the plaintiffs for a period of 11 years, the liberty could have been availed only after carrying out amendment to the plaint.

5. Considering all the aforesaid aspects, a case is made out for granting unconditional leave to defend the suit. Accordingly, unconditional leave is hereby granted. The suit shall be transferred to the list of Commercial Causes. The written statement shall be filed within a period of eight weeks from today.

JUDGE